

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of: _____ :

Retention by Broadcasters of _____ : MB Docket no. 04-232
Program Recordings _____ :

Comments of Thomas P. Taggart

1. These *comments* are submitted in vain, for, from the first paragraph, it is clear that the Commission has already decided to require all broadcast stations to retain recordings of their programming. Despite the opposition of several hundred broadcasters, this proceeding is already final. The remaining questions of: *For what hours?* and *How long must recordings be kept?* are irrelevant. Once the recording systems are in place, the answers are: *All the time* and *Forever*. Or at least for the length of the license period. For the real motive for requiring these recordings has nothing to do with obscenity and everything to do with program content regulation and revenue generation.

2. I am a practicing attorney, and hold a lifetime general class radiotelephone license. I am part owner of the licensee of two small-market FM stations.¹ The Commission was created to regulate interference between stations. Now attorneys outnumber engineers on the Commission's staff by a wide margin.² The genesis of this proposal is clearly with that legal staff.

¹WRRR-FM, St. Marys, WV; WXCR, New Martinsville, WV.

²As evidenced by the wholesale embrace by the Commissioners of BPL, a text-book example of a snake-oil technology.

3. Normally, we keep no recordings of the broadcasts on either of our stations. Both are satellite fed, one is adult contemporary, the other is classic rock. We don't air material from the "shock jocks" that attract the headline-seekers in Congress. Granted, the lyrics of some of the songs aired on the classic rock station are from the 60's and 70's, and celebrate the drug culture of those times.³ Songs that, back then, attracted the ire of the "Mullahs of M Street" in the era of "regulation by raised eyebrow." Then again, we've aired Peter, Paul and Mary's "Puff the Magic Dragon" on the A/C station, which begins with that classic line: "Puff the Magic Dragon, who lived by the C. And frolicked in the autumn mist in a land called Hanah Lee."⁴

4. *"We're from the Government, and we are here to help you."* Some of the most chilling words ever uttered. Presently, to establish that a station broadcast indecent, obscene, or profane material, a complainant must submit some kind of a summary of the material broadcast, and identify the station. Recently the Commission seems to have abandoned the need for a complaint to be filed.

Frustrated by the reluctance of broadcasters to voluntarily incriminate themselves in the face of an obscenity complaint, the Commission now seeks to shift the burden to broadcasters to prove themselves innocent.

5. Hence the Commission suggests that *all* broadcasters be required to record broadcasts in order to prove their innocence in the face of a complaint, whether well-founded or merely malicious. If you folks were in charge of the transportation department, we would all be required to blow into our dashboards before we could drive to work in the morning.

³ E.G. "Eight Miles High" by the Byrds. As Don Henley noted in "Boys of Summer:" "I saw a DEADHEAD sticker on a Cadillac. A little voice Inside my head said, 'Don't look back. You can never look back.'"

⁴ And you thought that was about drugs...shame on you! See Snopes.Com

6. However, the Commission does not propose to limit these recordings to just obscenity matters. See paragraph 7 of the *Notice*. That is, the NPRM suggests that the proposed record retention requirements should be crafted “so that they can be useful to enforcement of other types of complaints based on program content..” The “public interest” extortionists, of course, are rubbing their hands with glee. Bring back the Fairness Doctrine!

7. The Commission suggests the recordings might be used to enforce commercial limits in children’s television programming, and sponsorship identification rules. We believe these recordings will be used in any way possible to harass broadcasters. The “compliance specialists,” who already focus almost entirely on a station’s record-keeping abilities⁵, will now have a new tool to verify the running of EAS tests, and whether public affairs programs described in the “issues” list were actually run. We also expect these recordings to be used to monitor political advertising requirements. More to the point, with recording equipment required, licensees will be expect to present these recordings to prove they’ve met their public interest programming requirements at renewal time. Hence any discussion about these recordings being retained for 60 or 90 days is moot.

8. For that matter, any recording requirement will be yet another stream of revenue for the enforcement bureau. It does not matter whether or not the broadcaster plans to air controversial programming such as the Howard Stern Show. The station could be dedicated to playing show tunes and Sinatra. Failure to have this recording equipment in place will be a fineable offense.

⁵ The ones we’ve seen recently don’t appear to have enough technical background to get into any other area.

9. To radio broadcasters, the cost of the equipment will probably run in the \$2,000 to \$3,000 range. Mostly for the specialized software. I expect the software to have some kind of means to archive recorded programs to CD-ROM, probably in MP3 format⁶. The expense will be in the care and feeding of the machine, which can be a sizeable staff burden for small stations. As well as in the man hours spent archiving these recordings. For example, our entire front office staff is age 19, and named Ashley. But then, both the Congress and the Commission, by their past actions, demonstrate an outright hostility towards small business entities.⁷

10. Obviously, these requirements will impose an even greater burden on non-profit and low-power stations. Our neighbor in the Wheeling market, WVJW-LP, has already noted that the cost of the recording equipment would exceed his annual budget.

11. In the final analysis, the thrust of these regulations is towards greater regulation of program content, hence, toward regulation of speech. This is not just a “red state-blue state” issue, nor should those who normally support the White House support this proposal because it purports to be aimed at obscenity. As Stuart Epperson noted recently,⁸ the definition of obscenity is relatively broad. Suppose, he postulates, that some future FCC Commissioners:

“....determine that conservative views constitute hate speech - and hate speech is obscene. For example, we are strongly supporting a Constitutional amendment and would declare that marriage is between one man and one woman. Let us suppose that these Commissioners declare that such a position is against national policy and constitutes discriminatory hate speech. Of course the homosexual lobby would organize itself to insure that there were hundreds, perhaps thousands, of complaints

⁶I am not computer literate enough to know how many hours can be stored on each CD.

⁷ Such as arbitrarily moving back a month the payment date for the “regulatory fee” tax, which bears much more heavily on the small broadcaster than on the big conglomerates we must compete with.

⁸ President of Salem Broadcasting, see article entitled “Law of Unintended FCC Consequences” published May 6, 2004 in the *Washington Dispatch*, archived at: http://www.washingtondispatch.com/printer_8977.shtml

against the stations that took this point of view. Armed with that sort of ammunition, the FCC would have no problem finding the excuse for shutting down those voices that broadcast what they would call homophobic views.”

Exaggerated? Perhaps.⁹ But by requiring all stations to keep recordings of their broadcasts an open invitation is extended to all manner of special interest groups to paw through these recordings, looking for something, anything, that they can use to intimidate the broadcaster. And by their search, succeed in their mission of intimidation.

12. The Commission should abandon this pernicious attempt to regulate content, and return to it's historic role of regulating spectrum use by protecting stations against interference. The purveyors of obscene content are well known, and recording devices are cheap and plentiful. Those who are concerned about these broadcasts can certainly arrange for recordings to be made. Those who claim to be concerned about children listening to these broadcasts have their priorities misplaced. **To most teenagers, AM is a time of day, FM is “old folks radio.” We suggest the adults should spend some time listening to the rap music their kids are downloading onto their I-pods.**

Submitted by:

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⁹We would note that the Canadian Parliament is considering a bill to make anti-homosexual comments “hate speech,” while in Sweden a Lutheran Pastor was arrested and charged with violating a similar law as a result of his sermons.